



October 31, 2014

VIA CERTIFIED PRIORITY EXPRESS MAIL

Debe Hopkins, Mayor
Jeff Kiser, City Manager
Juanita Barnett, City Clerk
City of Anderson
1887 Howard Street
Anderson, CA 96007

Re: Notice of Violation and Intent to File Suit Under the Clean Water Act

Dear Mayor Hopkins, City Manager Kiser, and Clerk Barnett:

I am writing on behalf our client, Barbara A. Peck, in regard to violations of the Clean Water Act and California's NPDES General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities ("Storm Water Permit") occurring at the Anderson River Park ("Park"). By this letter, our client gives notice that the City of Anderson ("City") is in violation of the Clean Water Act. If these violations outlined below are not remedied within sixty days, our client intends to commence an enforcement action against the City, seeking civil penalties, prohibitive and mandatory injunctive relief, as well as other appropriate relief including attorneys' fees and costs. If you believe that any of the information in this letter is incorrect, please contact the undersigned immediately.

I. Anderson River Park

The Anderson River Park consists of approximately 440 acres situated along the banks of the Sacramento River, and is among the last and best remaining riparian oak woodland habitat in the State. ("Exhibit A.") The City of Anderson owns approximately 170 acres of land within the Park, the California Department of Fish and Wildlife ("CDFW") owns approximately 264 acres of land within the Park, and the City and CDFW have entered into a Cooperative Agreement to allow for City management and operations of the Park subject to certain limitations, including the Anderson River Park Management Plan.

The Park is home to numerous special status species, including but not limited to, California red-legged frog, western pond turtle, Willow Flycatcher, Yellow Warbler, Yellow-breasted Chat, Blue Elderberry, and Valley Elderberry Longhorn Beetle. The Park is permeated with wetlands, watercourses, ponds, groundwater seepage, and other water features that are hydrologically connected to the Sacramento River. The California Wildlife Conservation Board approved CDFW's acquisition of portions of the Park, noting that they were of "exceptionally high wildlife value."



II. Clean Water Act Requirements

Section 301 (a) of the CWA expressly prohibits the discharge of any pollutant to a Water of the United States unless such discharge complies with the terms of any applicable NPDES permit, and sections 301, 302, 307, 308, and 402 of the CWA. (33 U.S.C. §§ 1311(a)(1), 1342.)

Although EPA is the primary administrator of the CWA, section 402 of the CWA authorizes EPA to delegate its authority to states to implement and administer the CWA. (33 U.S.C. § 1342(b).) Pursuant to this provision, California has authority to regulate discharges of pollutants by, among other actions, issuing NPDES permits to dischargers, and establishing receiving water quality standards and objectives. The State Water Resources Control Board and the nine Regional Water Quality Control Boards, including the Regional Water Quality Control Board, Central Valley Region ("Regional Board") are the California agencies bearing responsibility for issuing NPDES permits.

a. Dredge and Fill Requirements

Under CWA section 402 a person may not discharge dredged or fill materials to waters of the United States without a Clean Water Act section 404 Permit. (33 U.S.C. § 1344.) Section 404 permits are issued and administered by the United States Army Corps of Engineers. (See 33 C.F.R. §§ 323.1-323.6.) Any deposit of dredged or fill material into waters of the United States in the absence of coverage under an individual or general Section 404 permit is a violation of the Clean Water Act.

Among other requirements, before commencement of any activity causing the dredge or fill of materials into Waters of the United States, an applicant must demonstrate that there is no practicable alternative to the proposed discharge that would have less adverse impact on the aquatic ecosystem, and that adverse effects are avoided and/or mitigated. (See 40 C.F.R. §§ 230.1-230.98.)

b. Construction Storm Water Requirements

Storm water permitting, a category of NPDES permitting, is delegated to and permits are administered by the State of California. Discharge of storm water from a land clearing and construction operation, including activities such as grading, mechanized clearing, filling, and the construction of roadways and ramps, disturbing more than one acre of land, requires coverage under a general or individual permit. (See 33 C.F.R. §§ 122.1(b)(2)(iv) and 122.26(b)(14)(x); NPDES General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order No. 2009-009-DWQ, as modified by 2010-0014-DWQ, NPDES No. CAS000002.)

Among other requirements, before land disturbing activity is started, the owner or operator must prepare Notice of Intent to be covered by the Storm Water Permit, and prepare a



Stormwater Pollution Prevention Plan. ("SWPPP.") The SWPPP provides for use of best management practices to prevent sediment and other pollutants moving offsite in storm water.

III. Clean Water Act Violations

At various times in the days and weeks in preparation for the October 5, 2013, River Fun Mud Run, and the September 13, 2014 River Fun Mud Run, held in and throughout Anderson River Park, the City constructed, caused to be constructed, and/or maintained various roadways, trenches, pits, ramps, and mechanized clearing in the Park. This activity took place on properties managed by the City of Anderson, belonging to the City of Anderson identified in City and CDFW documents as parcels numbered 201-500-017-000 in City documents, and on parcels belonging to the California Department of Fish and Wildlife, identified as parcels 201-500-018-000, 201-500-003-000, 052-060-001-000, and the Hawes 50 acres parcel with history # 820369, also known as the island in City and CDFW documents.

On or about May 12, 2014, the City conducted vegetation clearing, grading, and roadway construction in or near the Park's raft takeout area, on parcel number 201-500-003-000, managed and operated by the City of Anderson and owned by CDFW.

Continuously since prior to 2009, the City has maintained a once asphalt, now predominately gravel trail along the bank of the Sacramento River on parcel number 201-500-003-000, which trail has been and continues to regularly erode into the Sacramento River.

a. Dredge and Fill Violations

Construction and maintenance of the roadway and ramp ("Exhibit B"), on parcel 201-500-017-000 of Anderson River Park for the 2013 and 2014 River Fun Mud Runs constitutes fill under the Clean Water Act. Our client has verified that this location constitutes a Water of the United States as that term is used in the Clean Water Act. This area is within the ordinary high water mark of the Sacramento River, maintains a significant hydrological nexus to the Sacramento River, and performs important functions for floodwater storage, wildlife habitat, and water quality. The deposit of this fill material as approved, managed, owned, and operated by the City, is not covered by any individual or general section 404 permit and therefore constitutes a violation of sections 301, 402, and related provisions of the Clean Water Act. Each day on which the illegal fill material remains in place constitutes a violation of the Clean Water Act.

The vegetation clearing, grading, and roadway construction in or near the Park's raft takeout area ("Exhibit C"), on parcel number 201-500-003-000, conducted and managed by the City constitutes dredge and fill under the Clean Water Act. Our client has verified that this location constitutes a Water of the United States as that term is used in the Clean Water Act. This area is within the ordinary high water mark of the Sacramento River, maintains a significant hydrological nexus to the Sacramento River, and performs important functions for floodwater storage, wildlife habitat, and water quality. The deposit of this fill material, approved, managed,



maintained, and operated by the City is not covered by any individual or general section 404 permit and therefore constitutes a violation of sections 301, 402 and related provisions of the Clean Water Act. Each day on which the illegal fill material remains in place constitutes a violation of the Clean Water Act.

Over five years ago, the City constructed an asphalt trail ("Exhibit D") within the ordinary high water mark of the Sacramento River, on parcel number 201-500-003-000. Being within the ordinary high water mark of the Sacramento River, the trail has twice washed into the Sacramento River and was twice rebuilt. In 2009, the City again approved the reconstruction of this trail, this time using decomposed granite and plastic mesh waddles. Since that time, the trail has continued to, and does continue to, wash into the Sacramento River, including significant sediment laden discharges during normal rain events. The deposit of this fill material, approved, managed, maintained, and operated by the City is not covered by any individual or general section 404 permit and therefore constitutes a violation of sections 301, 402 and related provisions of the Clean Water Act. Each day on which the illegal fill material remains in place constitutes a violation of the Clean Water Act.

b. Construction Storm Water Violations

Construction and maintenance of various roadways, trenches, pits, ramps, and mechanized clearing in the Park, performed for the 2013 and 2014 River Fun Mud Runs (including but not limited to, "Exhibit E"), on properties managed by the City of Anderson, belonging to the City of Anderson identified in City and CDFW documents as parcel number 201-500-017-000, and on parcels belonging to the California Department of Fish and Wildlife, identified as parcels 201-500-018-000, 201-500-003-000, 052-060-001-000, and the Hawes 50 acres parcel with history # 820369, also known as the island in City and CDFW documents, disturbing greater than one acre of land, and requiring CWA permit coverage though the Storm Water Permit or an individual permit. Storm water runoff from the site is not covered by any individual or general storm water permit. To the extent that any general or individual storm water permit applies, the parties have violated the terms of the permit by failing to use best management practices, erosion control practices, and other protective terms included in those permits. Storm water runoff from the site has resulted in discharges of sediment to the Sacramento River and its tributaries throughout the Park. Each day of unpermitted runoff constitutes a separate violation of the Clean Water Act.

IV. Conclusion

Our client hereby puts the City on notice that, after the expiration of sixty (60) days from the date of this letter, our client intends to file an enforcement action against the City for the violations described, above. Again, to the extent that you believe any of the information in this notice letter is inaccurate, we urge that you or your representative(s) contact us at your earliest convenience. During the 60-day notice period, our client is willing to discuss effective remedies for the violations noted in this letter, and actions that might be taken to ensure future compliance



with the Clean Water Act. If you wish to pursue such discussions, it is suggested that you initiate those discussions immediately.

Pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4, each separate violation of the Clean Water Act subjects the violator to a penalty for all violations occurring during the period commencing five (5) years prior to the date of a notice of intent to file suit letter. These provisions of law authorize civil penalties of up to \$37,500 per day per violation for all Clean Water Act violations. In addition to civil penalties, our client will seek injunctive relief preventing further violations of the Clean Water Act pursuant to Sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), declaratory relief, and such other relief as permitted by law. Lastly, pursuant to Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), our client will seek to recover costs, including attorneys' and experts' fees, associated with this enforcement action.

Ms. Peck is represented by the ATA Law Group in this matter. Please direct all communications to the counsel below:

Jason Flanders
jrf@atalawgroup.com
Matthew Maclear
mcm@atalawgroup.com

ATA Law Group
409 45th Street
Oakland, CA 94609
916-202-3018

Very truly yours,

Jason Flanders
Aqua Terra Aeris Law Group



SERVICE LIST

VIA U.S. CERTIFIED MAIL

Lisa Jackson
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Thomas Howard
Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, California 95812-0100

Jared Blumenfeld
Regional Administrator
U.S. Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, California 94105

Pamela Creedon
Executive Officer
Regional Water Quality Control Board,
Central Valley Region, Redding Office
364 Knollcrest Drive, Suite 205
Redding, California 96002



Exhibit A



APPROXIMATE PARCEL LINES - ANDERSON RIVER PARK

PARCEL INFORMATION COMPILED FROM ASSESSORS PARCEL MAPS AND NOT FROM A LEGAL SURVEY.



Exhibit B

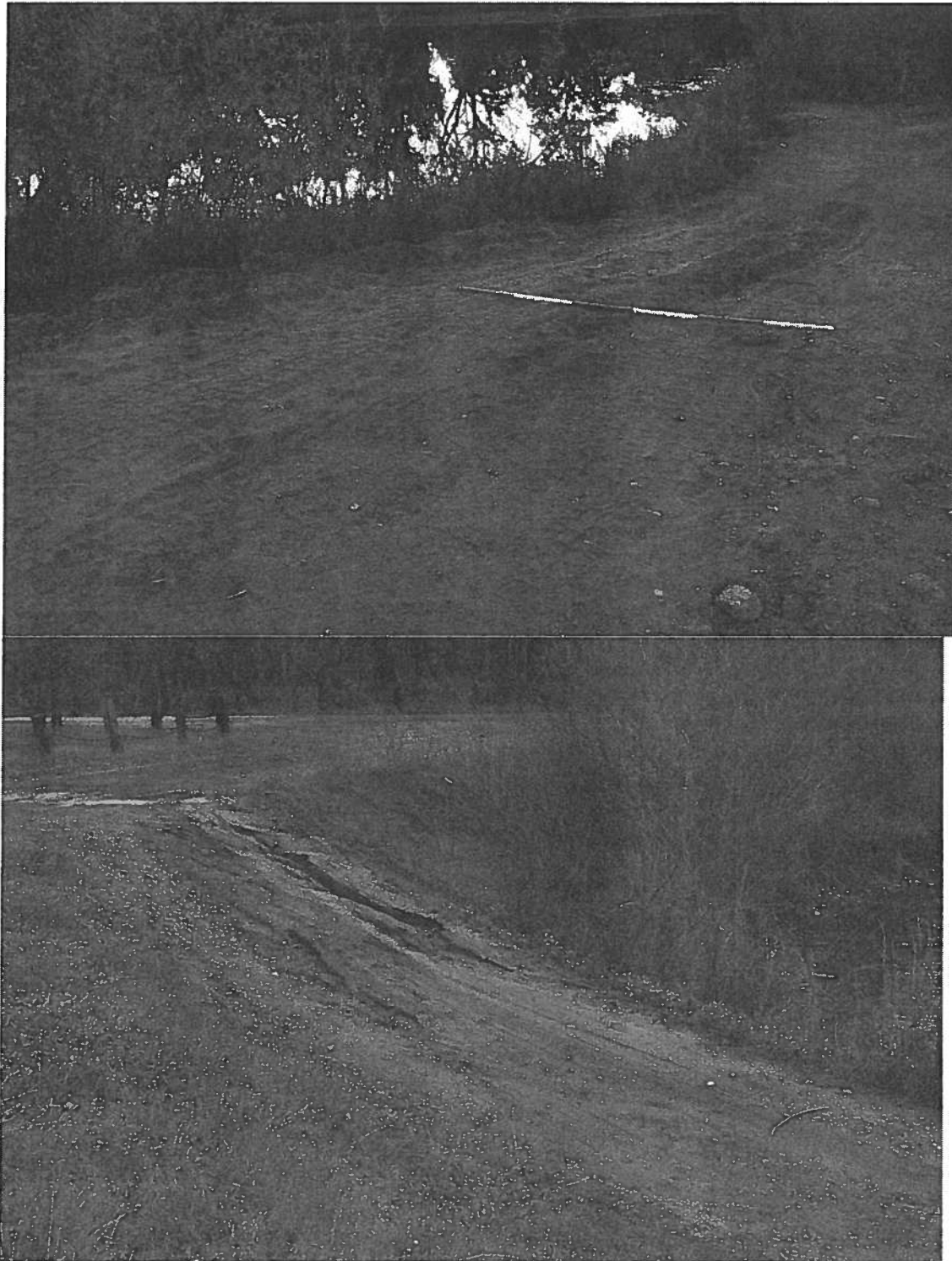






Exhibit C



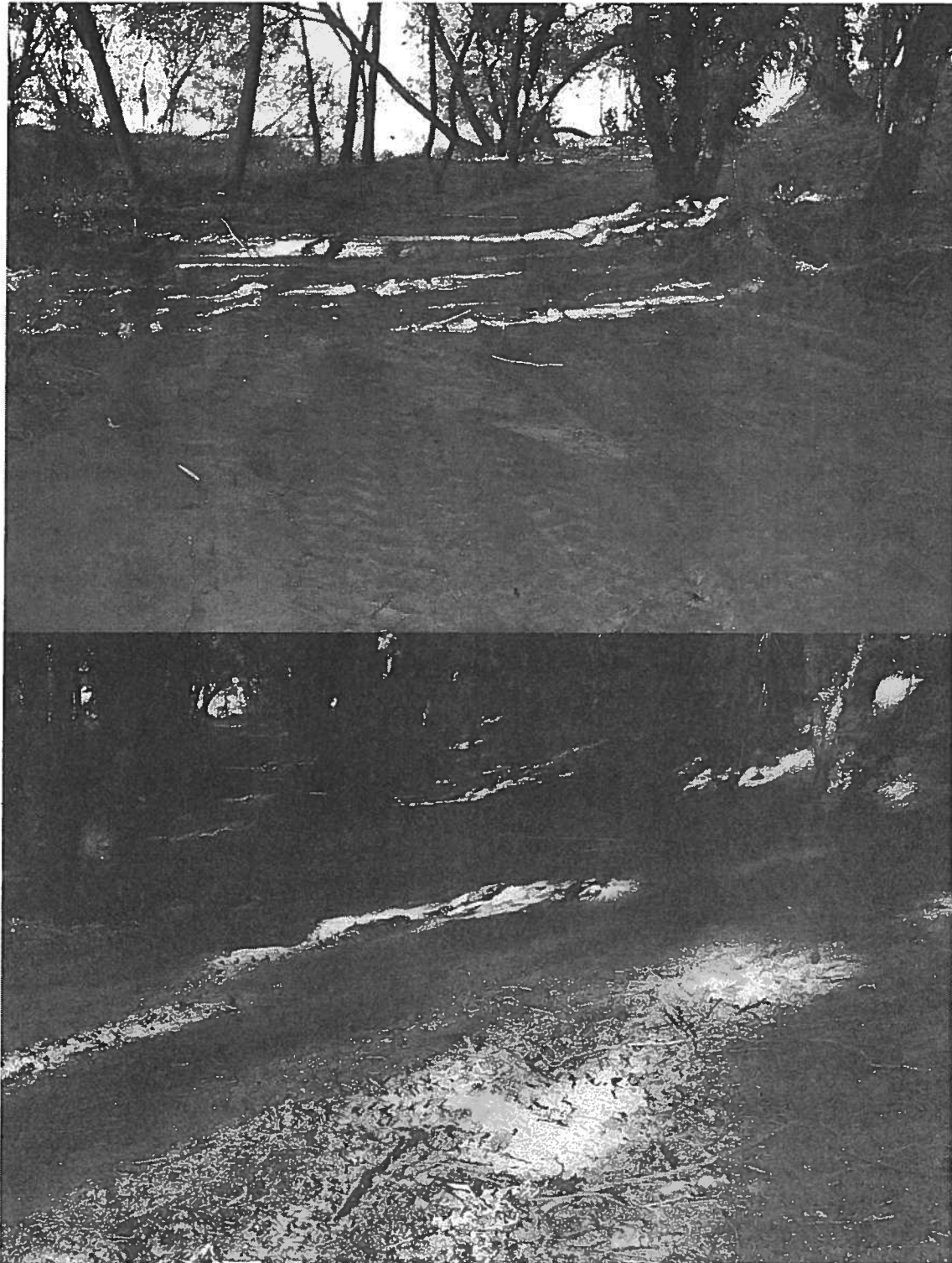




Exhibit D





Exhibit E

